

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

HYSITRON INCORPORATED,
a Minnesota corporation,

Plaintiff,

v.

MTS SYSTEMS CORPORATION,
a Minnesota corporation,

Defendant.

Civil No. 07-cv-01533 (ADM/AJB)

**DECLARATION OF MATTHEW
SPOHN IN SUPPORT OF
MOTION *IN LIMINE* TO
EXCLUDE PLAINTIFF'S
EXPERT WITNESS FROM
MARKMAN PROCEEDING**

I, Matthew D. Spohn, do state and declare under penalty of perjury:

1. I am an attorney with the law firm of Winthrop & Weinstine, P.A., attorneys for Defendant MTS Systems Corporation ("MTS") in this matter. I make this declaration upon personal knowledge.

2. I spoke with counsel for Hysitron regarding our proposed claim constructions on September 17, 2007. A true and correct copy of MTS's preliminary proposed construction of disputed claim terms, phrases and clauses, dated September 17, 2007, is attached hereto as ***Exhibit A***.

3. A true and correct copy of Plaintiff Hysitron Incorporated's ("Hysitron") preliminary proposed construction of disputed claim terms, phrases and clauses, dated September 17, 2007, is attached hereto as ***Exhibit B***.

4. A true and correct copy of Hysitron's draft Joint Claim Construction Statement, as well as an introductory correspondence from Hysitron's counsel dated October 11, 2007, is attached hereto as ***Exhibit C***.

5. A true and correct copy of an email correspondence I sent to Hysitron's counsel, Todd S. Werner, dated October 12, 2007, is attached hereto as ***Exhibit D***.

6. A true and correct copy of an email correspondence I received from Mr. Werner, dated October 15, 2007, is attached hereto as ***Exhibit E***. Before this October 15, 2007 correspondence, Hysitron had never before indicated its intention to call any witnesses, and had never previously mentioned or identified a "Dr. Colton."

7. A true and correct copy of an email correspondence I sent to Mr. Werner, dated October 15, 2007, is attached hereto as ***Exhibit F***.

8. A true and correct copy of an email correspondence I received from Mr. Werner, dated October 15, 2007, in which Hysitron refused to reconsider its position regarding its late disclosure of its expert witness, is attached hereto as ***Exhibit G***.

9. A true and correct copy of a letter correspondence Hysitron sent to the Honorable Michael J. Davis in the companion case of *MTS v. Hysitron*, Court File No. 06-CV-3853 (MJD/AJB) dated September 28, 2007, is attached hereto as ***Exhibit H***.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 24, 2007, in Minneapolis, Minnesota.

By: s/Matthew D. Spohn
Matthew D. Spohn